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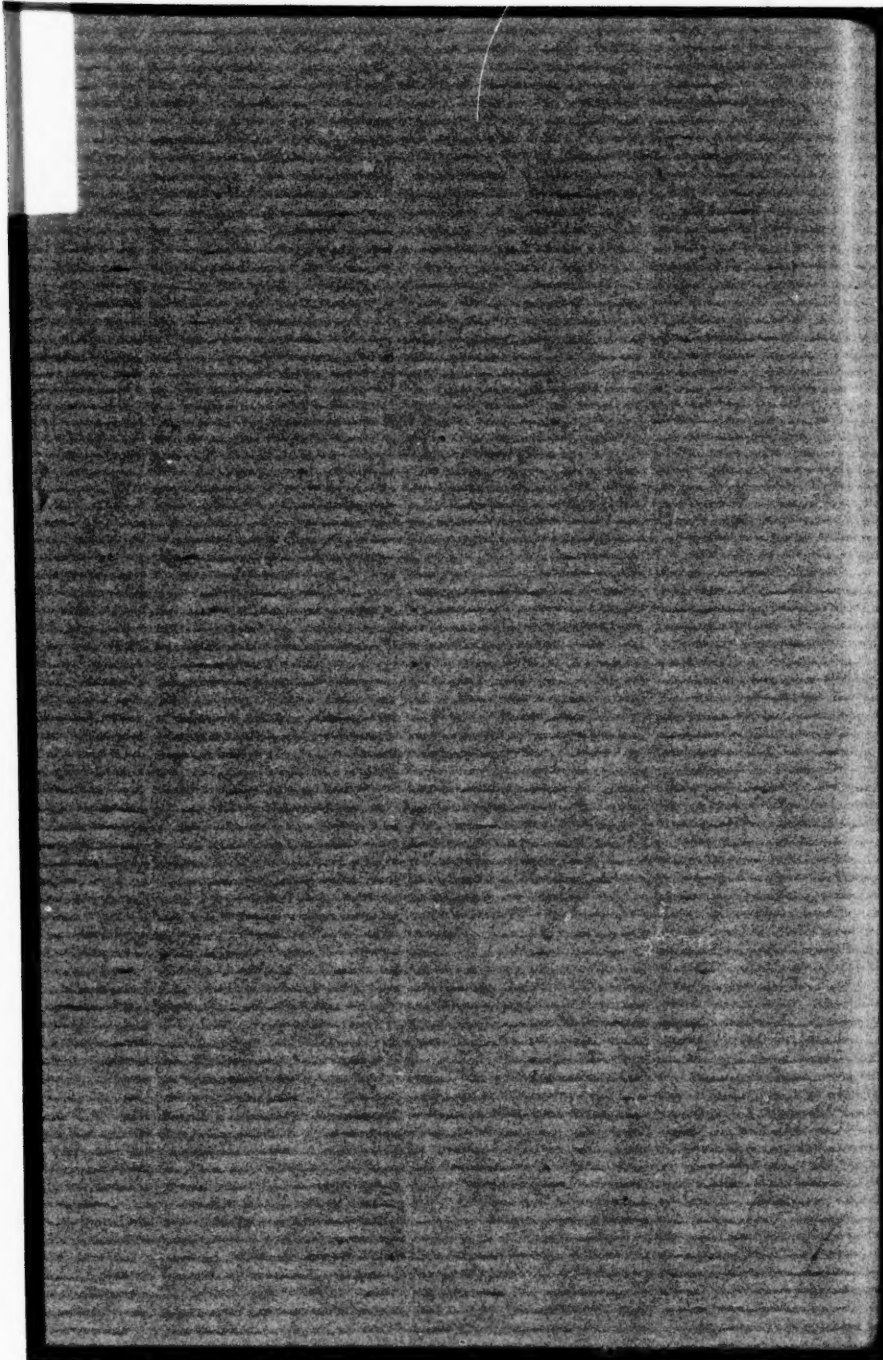
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Supreme Court of the United States.

OCTOBER TERM, 1896.

Term No. 570.

Case No. 16,349.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury,
Hartford County, State of Connecticut,

Plaintiff in Error.

vs.

ARTHUR F. EGGLESTON, Attorney for the State of
Connecticut,

Defendant in Error.

BRIEF AND ARGUMENT OF THE PLAINTIFF IN ERROR AGAINST THE MOTION OF THE DE- FENDANT IN ERROR, TO DISMISS OR AFFIRM.

The defendant in error has filed a motion to dismiss this case from the docket on the ground that the record presents no federal question for the consideration of the Court, and that this Court has no jurisdiction of the case for that reason. A motion to affirm the judgment of the Court below is joined with the motion to dismiss. The record presents several federal questions. They relate to the attempt of a state to take the property of its citizens without due process of law; to

impair the obligations of its own contract, and to impose the burdens of taxation in an unequal manner.

STATEMENT OF THE CASE.

Prior to 1887 the State of Connecticut had the care, maintenance, and control of the bridge and causeway described in the complaint (see Exhibit "A," printed record, pages 9-10-11), and up to that time no town or city had been charged with their maintenance. In 1808 the State temporarily shifted the burden of maintaining the highway which this bridge and causeway formed, from itself, by chartering a company to maintain it, and to collect toll and reimburse itself for the outlay.

(Private Laws of Conn., Vol. 1, page 254.)

On May 19, 1887, the State passed an act making said bridge and causeway a free public highway, and providing that certain towns therein named should maintain the same after having purchased the franchise and other property belonging to the Toll Bridge Company. The towns were to maintain this highway by officers of their own choosing, the first selectman of each of the towns constituting a board for that purpose.

(See Exhibit "10," page 60, Printed Record.)

(See also Section 7 of said act, page 62 of the printed record, for provisions relating to the care of said highway by the local officers of the towns.)

Under this act said town paid for the property of the Toll Bridge Company the sum of \$210,000 (see Exhibit "A," Printed Record, page 12), of which the State paid \$84,000.

After these towns had paid their full share of said sum of \$210,000 the General Assembly passed an act, approved June 29, 1893, being Public Acts of Connecticut, 1893, Chapter 239, page 395; which provided that thereafter the highway which included said bridge and causeway, should "be maintained by the State of Connecticut at its expense." The act

also repealed all of the preceding acts inconsistent with it, and provided for the appointment of a board of three commissioners for the care, maintenance, and control of the highway. The commissioners were duly appointed, and thereafter the State continued to maintain said highway and bridge until 1895, when the acts herein complained of were passed.

(The Act of 1893 appears in full in another part of this brief.)

The commissioners appointed under this Act of 1893, on the 13th day of November, 1894, acting for and on behalf of the State of Connecticut, made a contract with the Berlin Iron Bridge Company for the construction of a new steel bridge over Connecticut River where said highway was located, at a cost of \$325,900. This contract was made by said commissioners under authority of said act on June 29, 1893. (See Exhibit "I," Printed Record, pages 23 and 34.) While this contract was being executed, but before the former bridge had been removed, it took fire and, on May 17, 1895, was totally destroyed.

Soon afterwards, the General Assembly passed an act, approved May 24, 1895 (Printed Records, page 57), which repealed the act approved June 29, 1893, by which the State had assumed the maintenance of the highway, including the bridge, and under the authority of which, the contract for the construction of a new bridge had been made. The act also provided that "From and after the passage of this act, the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester shall, except as hereinafter provided, maintain the highway across the Connecticut River where the bridge formerly conducted by the Hartford Bridge Company, as a toll bridge, now is; and across said bridge and across and along the causeway and approaches appurtenant to and connected therewith." The act practically abrogated the contract of November 13, 1894 (Exhibit "I"), and re-

pudiated the obligations of the State growing out of it, to construct the bridge, although it provided for the appointment of commissioners to hear and determine all claims arising under and by virtue of any contract made and executed by the commissioners appointed under the act approved June 29, 1893, with any party, particularly with the Berlin Iron Bridge Company of Connecticut. (See Exhibit "8," Printed Record, page 58.) Afterwards the General Assembly passed a special act, approved June 28, 1895, which declared that said towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor were a body politic and corporate, "under the name of the Connecticut River Bridge and Highway District, for the construction, reconstruction, care, and maintenance of a free public highway across the Connecticut River at Hartford," etc. The act also designated the proportion of the extent of maintenance of said highway which each of the towns should pay. (See Exhibit "B," Printed Record, page 52.)

This act had one special feature, which up to the time of its passage was unknown in the legislation of the State. It provided for and appointed eight commissioners, to whom authority was given to enforce the provisions of the act, and also of the act approved May 24, 1895. (Exhibit "8.") They also had power to issue bonds which should be a charge upon the several towns (see Section 4, Exhibit "B," Printed Record, page 53). Up to this time the General Assembly had never before attempted to take care of or maintain any of the highways in the State by its own appointed agent. It had often imposed duties upon towns relative to highways, some of them of an extraordinary nature, but had uniformly left the town to discharge those duties by their own chosen officers. Such was the course pursued by the law of May 19, 1887. (Exhibit "X," Printed Record, page 60.) This Act of May 19, 1887, has been referred to by the counsel for the defendant in error as affording ground for claiming that the five towns

named in the act were specially benefited by the construction of this bridge. But this act has no connection with and forms no part of the Act of May 24, 1895, or of the special act of June 28, 1895, except to afford a description of the highway, the care of which is placed upon the five towns, which appears in the decree of the Court passed upon the report of the Commissioners appointed under said act (being Exhibit "A"), and is found on page 9 of the Printed Record. The Act of 1887 was repealed by the Act of June 19, 1893, and thereafter ceased to exist or have any binding force as a public law of the State of Connecticut. Neither the Act of May 24, 1895, or of June 28, 1895, contained any provision for the finding of special benefits to these towns in connection with said highway. This Act of 1887 provided that the local officers of these towns should carry out the improvement necessary to make this highway a free public highway, but the two acts of 1895 contained no such provisions.

The Act of June 28, 1895, provides a novel and hitherto unknown process of obtaining money and property from the towns named in the act, and from their citizens.

On November 16, 1895, the treasurer of the town of Glastonbury (plaintiff in error), having refused to pay a sum of money demanded of him by said State Commissioners for expenses incurred in connection with said highway, the Commissioners commenced the present proceedings for the purpose of compelling payment. The case was heard by the Supreme Court of Errors of the State of Connecticut at the May Term, 1896, on an appeal from a *pro forma* judgment, which had been rendered by the Superior Court for Hartford County against the plaintiff in error. (Printed Record, page 47.) A majority of the court decided adversely to the claims of the plaintiff in error. A minority, consisting of Andrews, Chief Justice, and Associate Judge Hamersley held that the Act of June 28, 1895, is invalid, so far as it relates to the appoint-

ment of commissioners by the State to perform the duties heretofore performed by town officers chosen by the towns themselves. (Printed Record, pages 85 to 99.) The case is before this court on a writ of error brought from said decision on July 16, 1896. The majority and minority opinions are made a part of the record.

CLAIMS OF THE PLAINTIFF IN ERROR.

The plaintiff in error makes these claims, which grow out of the record and are set forth in the assignment of errors on pages 69, 70, and 71 of the Printed Record.

1st. That the questions here raised are federal questions, and relate to the construction of the federal constitution.

2d. That the contract of November 13, 1894 (Exhibit "I," Printed Record, page 23), was a valid contract, and that the temporary bridge called for on May 18, 1895 (see page 36 of Printed Record), was constructed under said contract. These questions are raised in the first and second assignment of errors.

3d. That the two acts of May 24, 1895 (Exhibit "8," Printed Record, page 57), and June 28, 1895 (Exhibit "B," Printed Record, page 52), and the orders and requisitions of the Commissioners passed thereunder, are in violation of the Constitution of the United States and of the 10th Section of Article I thereof, because they impair the obligations of said contract of November 13, 1894. This question is raised in the third, fifth, sixth, seventh, and ninth assignment of errors.

4th. That said two acts of May 24, 1895, and June 28, 1895, and the orders and requisitions of the Commissioners thereunder, are in violation of the Constitution of the United States and of Section 1 of the 14th Amendment thereof, be-

cause they provide for ways and means of obtaining money and other property from the plaintiff in error, and from the town of Glastonbury and its citizens and taxpayers by a process that is not due process of law; and because they deprive the town of Glastonbury and the plaintiff in error, who is its treasurer, and the citizens and taxpayers of said town, of property without due process of law. This question is raised in the 10th, 11th, 13th, 14th, and 16th assignment of errors.

5th. That the two Acts of May 24, 1895, and June 28, 1895, and the orders and requisitions of said commissioners thereunder, are in violation of the Constitution of the United States and of Section 1, Article 14, of the amendments thereof, because they deny to the plaintiff in error, being treasurer of the town of Glastonbury, and to the town of Glastonbury and the citizens and taxpayers thereof the equal protection of the laws. This question is raised in the fourth assignment of errors.

I.

The question whether said acts of May 24th and June 28, 1895, as raised in the record, constitute due process of law, is a federal question.

The public act approved May 24, 1895 (Exhibit "S," page 57, Printed Record), and the private act approved June 28, 1895 (Exhibit "B," page 52, Printed Record), taken together, are an attempt to take the property of the taxpayers of Glastonbury and of its treasurer, without due process of law. This is a federal question. It was distinctly raised as a federal question and so argued in the court below (see 15th-21st and 23d paragraphs of the Defendant's Return, pages 18, 20, and 21 of the Printed Record). (See also paragraph 16 of the assignment of errors in the "Respondent's Appeal" to the Supreme Court of Errors of the State of Connecticut, Printed

Record, page 65.) This question is raised in the 10th, 11th, 12th, 14th, and 16th paragraphs of the "Assignment of Errors," accompanying the writ of error by which the case is brought to this court. (See pages 70 and 71, Printed Record.) The decision of the majority of the judges in the court below on this question may be said to have a twofold application. It held that the acts in question do not violate Article 14, Section 1, of the Federal Constitution, which provides that no state shall "deprive any person of life, liberty, or property, without due process of law." And it also held that the acts are not in violation of the Constitution of the State of Connecticut, nor of Section 12, Article 1, containing a provision similar to that which is found in the Federal Constitution.

If the decision of the court below upon this point can be said to apply to the State Constitution at all, it does not follow that it did not also apply with full force to Article 14 of the Federal Constitution, and it cannot be said that no decision of a federal question appears in the record, and that although the two constitutions contained similar language in reference to the same subject the decisions of the court below can only be applicable to the State Constitution.

In the opinion adopted by a majority of the court below this question is treated as a federal question and decided adversely to the claim of the plaintiff in error (see p. 83, Printed Record). We shall have occasion to review this part of the opinion hereafter, but we quote it here for the purpose of showing that the question now being considered is a federal question, and was so considered by the court below. It appears from the record that the question whether Article 14, Section 1, of the Amendments to the Federal Constitution was violated by the passage of said act, was raised by the plaintiff in error at every stage of the pleadings, that it was treated as a federal question by a majority of the court below.

We, therefore, assume that the Court will hold that this is a federal question, and will take jurisdiction of the cause.

II.

The contract of November 13, 1894 (Printed Record, page 23), was a valid contract, and the two acts of May 24, 1895 (Printed Record, page 57), and June 28, 1895 (Printed Record, page 52), and the orders and requisitions of the Commissioners thereunder are in violation of the Constitution of the United States and of the 10th section of Article One thereof, because they impair the obligations of said contract of November 13, 1894.

We will next consider the allegations of fact upon the record which relate to the impairment of the obligation of the contract of the Berlin Iron Bridge Company and the State of Connecticut, and the violation of Section 10, Article 1, of the Constitution of the United States.

For convenience of reference we here insert Chapter 239, of the Public Acts of Connecticut of 1893.

“Chapter CCXXXIX — An Act concerning the Hartford Bridge. Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. The highways across the Connecticut River at Hartford, where the present bridges now are, as laid out and established in accordance with the provisions of Chapter CXXVI of the Public Acts of 1887, together with said bridges, and the causeways, and approaches appurtenant to, and connected therewith, *shall hereafter be maintained by the State of Connecticut at its expense.*

Section 2. The Governor at the present session of the General Assembly, *shall appoint three commissioners, with the consent of the Senate,* one for the

term of two years, one for the term of four years, and one for the term of six years, who shall constitute a board for the care, maintenance, and control of said highways and bridges, and, upon the expiration of their several terms of office, their successors shall be appointed in like manner for the terms of six years from the time of appointment, and the expense of repairing and maintaining said highways and bridges shall be *incurred by said Board of Commissioners on behalf of the State*, and shall be reported by said boards from time to time, to the Comptroller of the State, who shall audit the bills for the same, and draw his order for the payment thereof on the Treasurer of this State, by whom said orders *shall be paid from the State treasury*.

Section 3. All causeways and other real estate used in connection with said bridges, or for the maintenance and protection of said causeways, shall be considered to be, under the provisions of this act, as appurtenant to said bridges, and the highway across the same.

Section 4. All acts and parts of acts inconsistent herewith are hereby repealed."

Approved June 29, 1893.

Public Acts, State of Connecticut, 1893, p. 395.

The allegations of fact upon the record which relate to the impairment of the obligations of the contract of the Berlin Iron Bridge Company, and the State of Connecticut, and the violation of Section 10, Article 1, of the United States Constitution are contained in:

Paragraphs 5, 6, 7, and 8 of Defendant's Return, pages 15 and 16, Printed Record, as amended in agreement of facts by counsel, Printed Record, page 48.

Paragraphs 9, 10, 11, and 12 of Defendant's Return, pages 17 and 18, Printed Record.

Judgment file Superior Court, page 47, Printed Record.

Paragraphs 4, 5, 6, and 8, Respondent's Appeal, page 64, Printed Record, and opinion Supreme Court of Error of Connecticut, Printed Record, page 83.

We maintain —

1. From the alleged facts, the question of impairing the obligations of contract between the Berlin Iron Bridge Company and the State of Connecticut, in violation of Section 10, Article 1, of the Constitution of the United States, appears on the records of this Court.

2. That the question so appearing on the Record of this Court is a Federal question.

3. That said question is so accompanied by allegations of fact as appear of record, that this Court will hold that a Federal question is presented.

The Act of 1895, approved May 24th, impairs the obligation of the contract between the Berlin Iron Bridge Company and the State of Connecticut, and is therefore in violation of the Constitution of the United States, and absolutely null and void.

Chapter 239, Public Acts of 1893, provides:

1st. That certain highways, bridges, causeways, and approaches shall be maintained by the State of Connecticut at its expense.

2d. That a Board of Commissioners shall be appointed who shall have the care and control of said highway and bridges.

3d. That the expense of repairing and maintaining said highway and bridges shall be incurred by said Board of Commissioners.

4th. That the expenses incurred by the said Board of Commissioners for the repairs and maintenance of said highways and bridges shall be paid by the Treasurer of the State from the State treasury.

The commissioners appointed under the Public Act of 1893 performed the duty of "care, maintenance, and control" of

said highway on behalf of the State until the passage of the Public Act of May 24, 1895, which by its terms repealed the Public Act of 1893, and put the maintenance of said highway upon the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester.

During the period while the commissioners were acting in behalf of the State, viz.: on November 13, 1894, they made a contract in behalf of the State with The Berlin Iron Bridge Company (see Exhibit "I," Printed Record, page 23) to build a new bridge across the river, and said company immediately thereafter began the performance of said contract.

On May 17, 1895, the existing bridge was wholly destroyed by fire, and on the following day the commissioners directed The Berlin Iron Bridge Company to complete the temporary bridge as contemplated by said contract, which said company at once began to do. (Printed Record, page 36.) Such was the condition of things relating to said highway when the General Assembly passed the Public Act of May 24, 1895.

The object of that act was to put the maintenance of the highway, including the bridge, upon the five towns named therein, and also to get rid of the contract of the commissioners in behalf of the State with The Berlin Iron Bridge Company, to build a bridge across the Connecticut River.

The act compels The Berlin Iron Bridge Company to go to the court to establish its validity; and also provides for a commission to hear and determine all legal claims and demands arising under or by virtue of said contract, *not to exceed forty thousand dollars.*

The Act of 1895 is an attempt to destroy the contract known as Exhibit "I," which was in force, and being executed when said act was passed, and this effect was sought to be accomplished by the repeal of Chapter 239, Public Act of 1893, by Section 1 of said Act of 1895.

The passage of the Public Act of May 24, 1895, and the Special Act of June 28, 1895, by the General Assembly, impaired the obligation of the contract of the State with The Berlin Iron Bridge Company, and, consequently, those acts are null and void.

The Act of May 24, 1895 (repealing the act of June 29, 1893), requires one of the contracting parties, The Berlin Iron Bridge Company, to go to court to prove that the act under which the contract was made conferred authority upon the agents of the other contracting party, the State, to make such a contract, when the subject matter of said contract, the building of a new bridge, at the very time the contract was made, was an obligation resting on the State under said Act of 1893, which the State was bound to perform. In substance, the contract was an agreement to do for the State just what the State itself on the date of the contract was bound to do by law.

The effect of the Act of May 24, 1895, is to compel a party to a valid contract to prove its validity in court, when the other contracting party is, by the law of the State, bound to do what he has contracted to have done.

It is submitted that no such law existed in this State at the time of the execution of the contract, and the passage of the act put an additional burden on the party seeking to enforce the contract and consequently impaired the obligation of the contract. The obligations of a contract are, that the contractor shall have the right under the law to have his contract enforced or performed, or, failing to have it enforced and performed, he shall recover in the courts of the State *the full amount of damages that he is able to prove he has suffered by reason of breaking the contract.*

In the case of Walker vs. Whitehead, 16 Wallace, 317, Mr. Justice Swayne says:

"The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it. This embraces alike those which effect its validity, construction, discharge, and enforcement. Nothing is more material to the obligation of a contract than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against impairment."

And in *Wolff vs. New Orleans*, 103 U. S., 367, Mr. Justice Field says:

"The prohibition of the Constitution against the passage of laws impairing the obligation of contracts, applies to the contracts of the State, and to those of its agents acting under its authority, as well as to contracts between individuals. And that obligation is impaired in the sense of the Constitution, when the means by which a contract at the time of its execution could be enforced, that is, by which the parties could be obliged to perform it, are rendered less efficacious by legislation operating directly upon those means."

In the case of *Fletcher vs. Peck*, 6 Cranch, 135, Chief Justice Marshall says:

"When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community."

And in *Sturges vs. Crowninshield*, 4 Wheaton, 200, Chief Justice Marshall says:

"The principle was the inviolability of contracts. This principle was to be protected in whatever form it was assailed. To what purpose enumerate the particular modes of violation which should be forbidden, when it was intended to forbid all !"

See also Miller on the Constitution, pages 530, 539, 540, and 541.

The Act of May 24, 1895, provides a new remedy, and limits the amount of damages which The Berlin Iron Bridge Company may recover, to \$40,000.

It supplies a remedy for the breach of the contract, but it is not the full remedy which law requires. Under the law as it was when the contract was made with The Berlin Iron Bridge Company, for a breach of the contract, the company had the right to recover all the damages it could prove it was entitled to, but under this act it can recover only \$40,000.00 in any event.

In the case of the *Planter's Bank vs. Sharp*, 6 Howard, 327, Mr. Justice Woodbury says:

"One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree, or manner, or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."

And in *Ogden vs. Saunders*, 12 Wheaton, 320, Mr. Justice Trimble says:

"As in a state of nature the natural obligation of a contract consists in the right and potential capacity of the individual to take or enforce the delivery of the thing due him by the contract, or its equivalent; so, in the social state, the obligation of a contract consists in the efficacy of the civil law, which attaches to the contract, and enforces its performance or gives an equivalent in lieu of performance. From these principles it seems to result as a necessary corollary, that the obligation of a contract made within a sovereign state, must be precisely that allowed by the law of the state, and none other."

"The laws which exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it. This embraces alike those which effect its validity, construction, discharge, and enforcement. Nothing is more material to the obligation of a contract than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution against impairment."

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A legislative act equivalent to a contract which is perfected, requiring nothing further to be done in order to its entire completion, is a contract executed, and whatever rights are thereby created, a subsequent legislature cannot impair.

Trustees Bishop Fund vs. Rider, 13 Conn., 94, 95, 96.

The State is under the same obligation as an individual to fulfill its contract.

Commonwealth vs. New Bedford Bridge, 2 Gray, 339 (350).

A party to a contract cannot pronounce its own deed invalid, although that party be a sovereign state.

Fletcher vs. Peck, 6 Cranch, 87 (*supra*).

The prohibition of the Constitution embraces all contracts executed or executory between private individuals or a state and individual or corporations, or between the states themselves.

Green vs. Biddle, 8 Wheaton, 1 (93).

The prohibition of the Constitution against the passage of laws impairing the obligations of contracts apply to the contracts of the State and those of its agents as well as to contracts between individuals.

United States vs. New Orleans, 103 U. S., 358.

If a contract when made was valid by the Constitution and laws of the State as there expounded by the highest State authority, no subsequent action by the State legislature or judiciary can impair its obligation.

Havemeyer vs. Iowa Co., 3 Wall., 294.

In 1876 the General Assembly of Louisiana passed an act purporting to relieve the city of New Orleans from its

obligation on certain bonds. In *Louisiana vs. Pillsbury*, 105 U. S., 300, Mr. Justice Field characterized the transaction in the following language:

"If the provisions of this act nullifying the pledges of the Act of 1852 are valid the consolidated bonds are virtually destroyed; no taxation is allowed to raise funds for them; their payment, therefore, would be so uncertain as to render them practically valueless. The chance with premium bonds offered in their place of a favorable turn of the wheel in a lottery, would be a poor substitute for the levy of an annual tax for the payment of interest and principal. We shall not waste words upon the scheme thus developed to evade the just obligations of the city. Notwithstanding the declaration in its preamble that the act seeks from the creditors the indulgence necessary 'for the public well-being and the maintenance of the honor'. It is, so far as the consolidated bonds are concerned, tainted with the leprosy of repudiation."

The effect of said Act of 1895 is to abolish all remedies provided for the enforcement or violation of contracts, under Chapter 239, Public Act of 1893, and in place thereof substitute limited, inadequate, and arbitrary measures, which diminish the duty and burden of the State, and deny substantial rights of the other party to the contract.

Under the guise of a change of remedy it is sought to avoid a legal liability. The Act of 1895, approved May 24th, is "tainted with the leprosy of repudiation." When repudiation is sought by means of an act of State Legislature in violation of the Federal Constitution, will not this Court say again, as it has before said, "We shall never immolate truth, justice, and law, because a State tribunal has erected the altar and decreed the sacrifice."

The contract known as Exhibit "I" was a valid and existing one when this Act of 1895, May 24th, was passed.

The Act of 1893 provides that "the expense of repairing and maintaining said highway and bridges shall be incurred by said board of commissioners on behalf of the State."

Evidently "to maintain" means, relative to a legally-established highway by bridge across a river, to do whatever shall be needed to keep up such highway in a condition safe and convenient for public travel.

That would require the building of a new bridge whenever an old one could no longer be safely used, and did not meet the necessities of public travel.

By the terms of that act the complete control of said highway is conferred upon the commissioners; there appears no restriction on their power to act. Beyond question, the duty to rebuild the bridge, in case public convenience, necessity, or safety required it, is put on the State by the act.

In support of the claim that to maintain a bridge imposes the duty to rebuild, the following cases are cited:

Mather vs. Crawford, 36 Barbour, 564.

Huggans vs. Riley, 125 N. Y., 91.

Commonwealth vs. Deerfield, 6 Allen, 156.

In the case of Huggans vs. Riley, the Court says:

"When the interests of the public of a town demand that its highway be made passable, the commissioner of highways has as much the implied power to effect that result by constructing a new bridge as he has the express power of doing so by repairing an old or replacing a destroyed bridge."

The State, in determining whether or not the bridge should be rebuilt, must necessarily reach such determination through the judgment of some agents, and what we are natural and reasonable men could the State adopt, then to submit the whole question to the jurisdiction, investigation, and determination

of the board of commissioners specially appointed for the "care, maintenance, and control" of the bridge in question.

Had the General Assembly intended to reserve any part of the control of said highway and bridge to itself, it would have put such reservation or restriction into the act.

Again, the necessity for the commission to act may arise when the Legislature is not in session. It is a matter which involves the public safety. This furnishes a strong reason why the whole power of determination should be conferred upon the commissioners.

It is admitted that the commissioners in making the contract acted in good faith. (Finding of Facts, paragraph 1, page 48 of Printed Record.)

The law provides that the highway across the Connecticut River "where the present bridges now are," shall be maintained by the State. This language evidently contemplates that hereafter those bridges may not be there. It therefore contemplates the substitution of a new bridge, which would constitute a part of said highways, in place of the old one, whenever it should be necessary to do so. The board had the "care, maintenance, and control of said highways and bridges" which were located "where the present bridges now are," and being charged with the care and maintenance, and having the control of those highways, they had the power by clear implication to substitute a new bridge for the old one, whenever the old one ceased to be sufficient for the purposes of the public travel thereon. This board having the care, maintenance, and control of the highway, were themselves the judges of when the highway needed repairing, and were also charged with the duty of rebuilding any part of it, when, in their opinion, it became necessary to do so. In constructing the new bridge it was their duty to provide for the safety and convenience of the public travel thereon.

The commissioners, having the power to rebuild, must also have the authority to determine the capacity and character of such bridge needed to adequately accommodate the amount of public travel over it; and also to take into consideration in deciding upon the plan of such bridge the probable increase of such travel, and all the conditions that may attend it in the immediate future.

The relators in their reply say, that the contract did not provide for a bridge as it was then constructed, that the old bridge could have been rebuilt for \$75,000, while the new bridge was to cost \$325,000. (See Relator's Reply, paragraph 14, Sections 1, 2, and 3, Printed Record, page 39.)

It is absurd to say that the board was obliged to rebuild the old wooden bridge as it had previously existed, to restore it piece by piece, timber by timber, without reference to increased travel, or the requirements of the public, in the way of electric cars, etc. Manifestly, it was their duty to construct such a bridge as was needed at that point, and to furnish the public with a structure that would accommodate all kinds of public travel, whether it would cost more or less than the old wooden bridge could have been built for. Accordingly, said board of commissioners executed the contract, which is known as Exhibit "1" in the defendant's return, and we say that the contract is a valid contract, and that said board had the power to make it.

The defendants in error claim that the before-mentioned Acts of 1895 are not void as impairing the obligations of the contract made by the State with the Berlin Iron Bridge Company, because for a consideration that company has, since the filing of the return in this case, discharged its claim against the State under said contract and canceled and surrendered the contract to the State.

The constitutional prohibition is: "No state shall pass any law impairing the obligation of contracts."

The effect of this prohibition is that such laws if passed by a state are null and void.

Assuming the act to have been void before the State made the settlement, the effect of the claim of the relator is that the settlement gave validity to act which before was void.

The Act of May 24, 1895, repeals the Act of 1893, under which a valid contract had been made to build the bridge by the State, and while that undertaking was in force and the work of construction was in progress; and also transfers the obligation resting on the State under the Act of 1893 to the five towns, and binds them to perform it.

The respondent, being one of the five towns directly affected by said act, has a pecuniary interest in the matter, and consequently has a right to raise the question of the unconstitutionality of the Acts of 1895 in this action which is brought to enforce a payment thereunder.

The question of the unconstitutionality of the act is to be decided with reference to the situation of the parties affected by the contract and the acts at the time the Act of May 29, 1895, was passed.

The Berlin Iron Bridge Company was executing the contract when the Legislature of 1895 convened. On the permanent structure the company had expended \$5,776.00, on the temporary bridge provided for by the contract the company had expended \$600.00 in labor, and had purchased about \$8,000.00 of material. By order of the commissioners of 1893 (attached to Exhibit "I" of respondent), dated May 18, 1895 (after the fire), the company was required to go forward and complete the temporary bridge, the language of the order being "under your contract of Nov. 13, 1894." The company completed the temporary bridge, and afterwards it was paid \$18,000.00 for it by the relators, acting for the State.

This was on December 13, 1895. In addition to this payment the company was awarded \$27,526.00 by the commission, provided in the act, for their claim under the contract of November 13, 1894. The account stands as follows:—

Amount of claim presented by Berlin	
Iron Bridge Company,	\$72,071.00
Amount awarded by commission under contract,	
	\$27,526.00
Amount paid the company for temporary bridge,	
	18,000.00—45,526.00
Difference,	\$26,545.00
(See paragraphs 5, 6, and 7, Finding of Facts.)	

The temporary bridge was built under the contract, and in pursuance of the order of the commissioners of 1893, dated May 18, 1895. The material used, labor expended, and contract profit, must have been included in this amount. The sum of \$27,526.00 was awarded under the contract, and the total of the two was \$5,526.00 more than was permitted by the act approved May 24, 1895, the limit in that act being \$40,000.00. It, therefore, appears that the settlement as described in the record was not authorized by the act.

In *Louisiana vs. Pillsbury*, 105 U. S., p. 278, this Court said: "Legislation of a state thus impairing the obligations of contracts made under its authority is null and void; and the courts in enforcing the contracts will pursue the same course and apply the same remedies as though such invalid legislation had never existed."

The Acts of 1895 being null and void, it is not possible for any party in interest to waive or heal the violation to the Constitution of the United States.

An unconstitutional act cannot be cured by stipulation.

A void legislative act cannot be healed by agreement. When that legislative act is in collision with the Federal Constitution any attempted agreement of the parties to make such legislative act valid is as void and inoperative as the original offending act.

If a state should pass an act of attainder it would be absurd from the very nature of an attainder, for the parties affected thereby to stipulate that the act or attainder should have force in respect to them. The act violates Section 10, Article 1, Federal Constitution, and is void. The same would be true of an *ex post facto* law. And it is equally true of an act impairing the obligation of a contract. It is legally impossible for the parties to such an act by stipulation or agreement to give any force or power, or effect to the unconstitutional and void act.

The Act of 1895, approved May 24th, being null and void because in violation of the Constitution of the United States, it is competent for any party against whom that act is attempted to be enforced to invoke the protection of the Federal Constitution.

III.

The two acts of May 24, 1895 (Printed Record, page 57), and June 28, 1895 (Printed Record, page 52), and the orders and requisitions of the Commissioners made under the authority of said acts are in violation of the Constitution of the United States, and of Section 1 of the 14th amendment thereof, because they deprived the town of Glastonbury and the plaintiff in error who is its treasurer, and the citizens and taxpayers of said town, of property without due process of law.

The appointment of commissioners by the Legislature to perform the duties specified in the acts of May 24 and June

28, 1895, for the town of Glastonbury to perform, is a part of the process by which the property of the town of Glastonbury, its treasurer, and of its citizens, is to be taken for the purposes named in the act. But it is not "due process of law" within the meaning of the Federal Constitution. The appointment of commissioners by the Legislature for the purpose named was an attempt to take away from the town of Glastonbury the right of local self-government, and the right of performing such duties as the Legislature might impose upon it, through officers of its own choosing. Glastonbury was incorporated as a town in 1690, it having been prior to that time a part of the town of Wetherfield. With other towns of the state which existed prior to the adoption of the State Constitution in 1818, Glastonbury had certain rights as a municipal corporation, with which it has never parted. The State Constitution never took away those rights. On the contrary, it preserved them in the form which they existed before the Constitution was adopted. The right of local self-government and to choose its own officers for the purpose of administering that local self-government, constituted a part of those rights of the town of Glastonbury, which have existed since 1639, when the three towns of Windsor, Hartford, and Wetherfield (which then included Glastonbury), "on their own behalf appointed committees and magistrates, who, as a General Court, directed the affairs common to the three towns." (Minority opinion, Printed Record, page 90.) It is not claimed that the Legislature cannot impose duties upon these towns. That body must be the judge of what the towns must do relating to highways, within their own limits. They may be compelled to build public works which their own citizens might not approve of; but, being town duties, they must be performed by town officers, not state officers.

The minority opinion prepared by Chief Justice Andrews and concurred in by Justice Hamersley, has discussed this

subject with great clearness. A few extracts from that able opinion will illustrate the point here urged.

"The real difficulty is with the power of the legislature under the provisions of the State constitution to give the whole execution and control of duties and powers assigned to the town to persons in whose selection the towns have no agency, direct or indirect, and over whose conduct they have no control.

"It will be a surprising doctrine to the people of this State, even if only suggested that the constitution by the grant of legislative powers has conferred on the legislature the authority to take from them the management of their local concerns, and the choice of their own local officers." (Record, page 86.)

And, again, in speaking of towns in this State, Chief Justice Andrews uses this language:

"These corporations were governed by their own inhabitants in town meetings, and their affairs were managed by officers chosen by themselves, and who were always inhabitants of the town. And they provided in that instrument (the Constitution) that the rights and duties of all corporations should remain, as if the Constitution had not been adopted, except so far as therein restricted or limited." (Record, page 88.)

"This right of the inhabitants to themselves order the municipal duties assigned to the town was plainly one of those 'rights and privileges derived from our ancestors,' which the Constitution was adopted 'in order more effectually to define, secure, and perpetuate.' By the several articles of the Constitution above mentioned, that instrument intended to make sufficient provisions to that end. It did guarantee the perpetual existence of the several towns with selectmen to manage their local affairs, and a town clerk to record their doings at town meetings; although it left the variety and duties of the officers of the local police subject to legislative change." (Record, page 88.)

"The Legislature may regulate the conduct of the town corporation, may determine the local duties here

assigned to them, and in that sense the towns derive their powers from the Legislature, but the possession of some local duties and powers, the administration of such duties by themselves or their own officers is inherent in the towns, which the Constitution makes the basis of the new government, and the Legislature has no power to destroy this town. The Constitution assumed the existence of towns as local municipalities, and contemplates that they shall continue as they have hitherto been." (Record, page 94.)

"When, therefore, the Legislature has included within the municipal duties of Glastonbury, and the four other towns that are named, the maintenance of a highway described, it could not appoint the agents, who, on behalf of the town, were to exercise those duties and powers. The theory of the Constitution is that the several towns are of right entitled to chose whom they will have rule over them; and that this right cannot be taken away from them, and the electors and inhabitants disfranchised by any act of the Legislature, or of any or all of the departments of the State government combined." The People *ex rel.* Bolton vs. Albertson, 55 N. Y., 56.

See also the authorities on this point "In the minority opinion," page 96.

This point is discussed in the majority opinion of the court below in the following language:

"It has, undoubtedly, been the general policy of the State to leave the expense of public improvement for highway purposes to the determination of the municipal corporations within the limits of which the highway may be situated and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection. But when the State at large, or the general public, have an interest in the construction or maintenance of such work, there is nothing in our Constitution or in the principles of natural justice upon which it rests to prevent the General Assembly from assuming the active direction of affairs by such agents as it may see fit to appoint, and

apportioning whatever expenses may be incurred among such municipalities as may be found to be especially benefited without first stopping to ask their consent."

Norwich vs. County Commissioners, 13 Pick., 60.

Rochester vs. Roberts, 29th N. H., 360.

Phila. vs. Field, 55th Pa. State, 320.

Simon vs. Northrop, 40th Pac. Rep., 560.

As against Legislation of This Character American Courts

~~will hold that no plea can be set up of a right of local self-government implied in the nature of our institutions.~~
 generally hold that no plea can be set up of a right of local self-government implied in the nature of our institutions. People vs. Draper, 15th N. Y., 532, 543; People vs. Flagg, 46 N. Y., 401, 404; Commonwealth vs. Plaisted, 118 Mass., 375; 19th Northeastern Reporter, 224.

It will be observed that ^{the}~~an~~ opinion prepared by Judge Baldwin for the majority of the court below admits that it has been the general policy of the State to leave the expense of public improvement for highway purposes to the determination of the municipal corporations within the limits of which the highway may be situated, and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection. The opinion also holds that there is nothing to prevent the General Assembly from "assuming the active direction of affairs by such agents as it may see fit to appoint." The general policy of the State is probably here correctly stated, but it might also have been said with equal truth that the Legislature has often designated the expense of public improvement which towns should assume, although it has left the completion of such improvement to the town officers appointed by the town. But we cannot consent to the conclusion which the majority of the court arrives at in the matter of the power of the Legislature to appoint state agents to discharge the duties which properly belong to town officers, and which have been their inherent right since 1639. In support of the position taken by the majority of the court be-

low, Judge Baldwin cites several cases. But upon a careful examination of the cases cited, it appears that they do not sustain the position taken in the majority opinion, but most of them do sustain the position which we now urge.

We call attention to the following cases cited in the majority opinion:

In the case of *The Inhabitants of Norwich vs. The County Commissioners of Hampshire*, 13 Pickering, 60, it appears that the Legislature of Massachusetts passed an act which provided that one-half of the expense of building a particular bridge should be borne by the county, and the other half by the town in which it was situated. The act provided that the bridge should be built by the local officers of the county, viz.: the County Commissioners, and the expense of the structure was to be met by the town and county by funds raised by local action of the two municipalities. In that case the duty was imposed and the discharge of it left to the local officers.

This decision is not adverse to the claim of the plaintiff in error, because it leaves the discharge of a public duty to the local officers chosen by the inhabitants of the county where the duty is to be performed. The act that we complain of imposes the duty, but provides for its discharge by officers not chosen by the inhabitants where the duty is to be performed, but appointed by the Legislature which imposes the duty.

The case of *Rochester vs. Roberts*, 29 N. H., 360, appears to have no application to the questions raised in this record.

Philadelphia vs. Field, 58 Pa. St., 320.

In this case the Court discussed an act requiring the city of Philadelphia to build a bridge over the Schuylkill River at South Street, and appointing a commission to build it, and to create a loan not to exceed \$600,000. The city was required to provide a sinking fund for the redemption of these bonds at the end of forty years.

This case lays down no principle adverse to the claim of the plaintiff in error. Philadelphia was required to build and maintain a bridge within its own limits, and no outside corporation was required to pay anything towards it.

The case of *Wheeler's Appeal*, 45 Conn., 306, cited in the majority opinion holds that "long continued legislative usage is of controlling weight upon the question of constitutionality of an act." There is no legislative usage in the history of the State of Connecticut that affords any precedent or sanction for the two acts of May 24 and June 28, 1895. An examination of the authorities cited in the opinion of the court shows that in one essential particular, viz.: the appointment of State Commissioners to perform a town duty, these acts are entirely without precedent. No usage of this kind exists. The case cited has no bearing on the question.

Simon vs. Northrup et al., 40 Pac. Rep., 560. Oregon, June 3, 1895.

The facts in this case were substantially as follows: The city of Portland had issued its bonds for the care of certain bridges and ferries within its limits. A committee was appointed by this act to acquire these bridges and ferries in the name of the city of Portland, and to issue the city's bonds to raise money for their future care and maintenance, then to turn over the bridges and ferries to the county court to control as it saw fit. A county tax was to be laid to redeem the bonds issued by the city of Portland, also those issued by the committee in the city's name. The Court held the act unconstitutional so far as it required the county to pay for the bonds already issued by the city, but valid so far as it required the county to pay for the future maintenance of the bridges.

14 Colonial Rec., 176. Oct., 1773.

Cited in the majority opinion as being on page 605. In this resolution the town of Mansfield was ordered to build and maintain a bridge over the Natchaug River,

then in the town of Mansfield, "by ways and means that they shall judge proper." If they did not complete this work by the next January, a committee of three was appointed to build it and to report the cost to the next Assembly, "in order to their reimbursement in such way as shall appear to be just and right."

In the first instance the town was left to its own free will in building a bridge within its own limits, and the committee of three had no power by this resolution to bind the town in any way.

13 Colonial Rec. May, 1772.

This reference is to the following facts:

Three citizens of Norwich obtained private subscriptions to build a bridge in the town of Norwich, but the subscribers, when the bridge was completed, could not pay. The three citizens applied to the Legislature, which gave them liberty to set up a lottery to raise 600 pounds to pay for the bridge. The town was to appoint managers, under bonds, and the managers, under order of the town, were to apply the money towards the expense of the bridge already incurred, and to be incurred, and to report to the next Assembly.

This case embodies many of the precise principles for which the plaintiff in error is here contending. The town is allowed to raise the money itself, to appoint its own managers, and to give its own orders.

In this case the procedure is entirely different. Here the treasurer is asked to pay bills concerning which he knows and can know absolutely nothing on the order of commissioners, with whom he has no official connection.

14 Colonial Rec., 198. 1773.

Cited in the majority opinion as on page 630. The committee referred to in the case of the town of Norwich, 13 Colonial Rec., 610, was allowed to set up another lottery for the same purpose and under the same conditions, inasmuch as the 600 pounds raised by the former lotter had proved insufficient.

The majority opinion cites Vol. 1, Private Laws, p. 285, as containing evidence of legislation which affords a precedent for the acts of 1895. That legislation was as follows:

"Resolved, That the inhabitants of the said town of Granby do build, and hereafter maintain, a good and sufficient bridge at their expense across said river at the place where said new road is laid and established, or at such other place eastward thereof as said highway may be altered unto by order of said County Court, upon the application now before them, as aforesaid."

In the case of *Maynard vs. Hill*, 125 U. S., 490, it appears that the territorial legislature of Oregon, upon the application of the plaintiff, passed an act dissolving the bonds of matrimony between Maynard and his wife, without notice to, or knowledge by his wife, who, with their children, had been left by him two years before in Ohio, under promise that he would return or send for them within two years.

The Court held that the act was constitutional, and Mr. Justice Field, in giving the opinion of the Court, said: "A long acquiescence in repeated acts of legislation on particular matters is evidence that those matters have been generally considered by the people as properly within legislative control."

As has already been shown, there has been no long acquiescence, no repeated acts of legislation on the particular matter of appointment of State agents to perform the duties of the selectmen of the towns.

The act complained of is the first and only act of its kind. It is without precedent.

Agawan vs. Hampden, 130 Mass., 528, 1881.

In this case it was decided that a legislature might authorize and require a county or a town to raise and appropriate money for any public use within its limits, or for the reimbursement of money already paid for such a use.

Hampden County had been authorized to build a bridge between Springfield and Agawan, and three commissioners were to be appointed by the local court

to determine what cities or towns in Hampden County were specially benefited, also their proportions. The commissioners appointed by the court placed the whole burden upon Springfield and Agawam.

The next legislature enacted that if the benefits to the two towns did not equal the cost of the bridge, then the county was to pay the two cities the cost of the bridge, less the benefits the two cities received. This act was upheld.

Kingman vs. Metropolitan Sewerage Com'rs., 153 Mass., 566.

In this case the court considered an act providing that particular towns should be assessed for the cost of a new system for the disposal of sewage. C. Allen, J. "It is within the proper province of the Legislature to determine where they (these burdens) shall rest."

The opinion does not state whether the sewage system affected all the towns which were assessed. Of course, if the system did affect all the towns which were assessed, the court was only laying down an acknowledged principle of law, which is not here disputed.

The judge who prepared the opinion alluded to certain authorities holding a different doctrine in the following language:

"The authorities cited by the respondents from Vermont, New Jersey, and Michigan show that different views of the legislative power prevail in those states. If the question was entirely new, these decisions would be entitled to and would have great weight with us; but they are not consistent with the views which we entertain of the powers vested in the Legislature by our own Constitution."

Salem Turnpike and Chelsea Bridge Corporation
County of Essex et al., 100 Mass., 282. 1868.

A statute which provides for laying out a road and bridge, and that a court should appoint commissioners to determine what cities and towns were specially benefited by the layout and in what proportions they should

pay the expenses of maintenance, is constitutional. This decision, whatever weight it may or may not have, does not touch the vital point in this case, which is that the Connecticut Legislature attempts to dictate as to the exact mode of payment by the towns. This case also directs that the commission shall be appointed by the local court, not by the Legislature.

It would be a mistake to judge our Constitution by that of Massachusetts.

The provision of the Massachusetts Constitution relating to the powers of a legislature touching these matters is as follows:

"Full power and authority are hereby given and granted to said General Court from time to time to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions, and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this commonwealth and for the government and ordering thereof, and of the subjects of the same."

Kingman Petitioners, 153 Mass., see p. 572.

It is enough to say that the Constitution of Connecticut contains no such clause. Towns under our system have the right to lay their own taxes. It is not due process of law to seize their funds without notice, or else subject the treasurer to imprisonment.

But it may be said that the majority of the court below has placed its construction upon the State Constitution, and that his court cannot review this decision, because that would not be a federal question. The reply to this suggestion is that the power to appoint its own officers to discharge such duties as might be imposed upon the town of Glastonbury belonged to

that town before the Constitution was adopted, and existed then, and still does exist independent of the Constitution. That instrument did not give the power. It defined it, and secured and perpetuated it more effectually; but it did not grant it. It follows, therefore, that so much of the Act of June 28, 1895, as appoints the State commissioners to discharge the duty imposed by it upon the town of Glastonbury, does not constitute due process of law, because it interferes with and destroys that power which the town has of discharging its town duties, whether self-imposed or otherwise, by officers of its own choosing. And it follows, also, that this question is unaffected by any construction of the State Constitution by the majority of the court below, since the process provided for in the act interferes with that power which exists independent of that instrument.

We quote some of the curious provisions of ancient codes, to show what powers towns had in the earliest days of this State or colony:

Connecticut Laws of 1643.

It is ordered that each town choose two surveyors yearly to look to the highways, who shall have liberty to call out every team and person fit for labor, in their course, one day every year, to mend the said highways; wherein they are to have special regard to those common highways which are betwixt town and town. The charge whereof is left to the particular towns for the present, to be ordered according to their own rules, and in case any surveyor shall not attend the said service by calling out the teams and persons aforesaid, where need is, he shall forfeit five shillings for every offense.

July 5, 1643.

Colonial Records of Conn., Vol. 1, page 91.

Ludlow's Code, 1650.

Whereas the maintaining of highways in a fit posture for passage according to the several occasions that

occur, is not only necessary for the comfort of man and beast, but tends to the profit and advantage of any people, in the issue—

It is thought fit and ordered that each town within this jurisdiction shall every year choose one or two of their inhabitants as surveyors, to take charge of and oversee the mending of the highways within their several towns respectively, who have power hereby allowed them to call out the several carts or persons fit for labor in each town two days, at least, in each year, and so many more as in their judgment shall be found necessary for the attaining of the aforementioned end, etc., etc.

Adopted by General Court, May, 1650.

Colonial Records, Connecticut, Vol. 1, pages 527, 528.

We have thus far spoken only in reference to that portion of the Act of June 28, 1895 (Printed Record, page 52), which appoints State commissioners to perform town duties. This is only a part of the process provided in the act for taking the property of the town and its taxpayers. Properly speaking, what has thus far been considered relates only to the officers who are to enforce and carry out the process. The process itself which these officers are to carry out and enforce mainly appears in Section 4 of said act. (See Printed Record, page 53.)

IV.

We say that a State statute authorizing this mandamus against the treasurer upon the facts stated in the record does not provide "due process of law," and that the State court in upholding it necessarily decided a federal question against the plaintiff in error.

The provisions in the two Constitutions, that of the State of Connecticut and of the United States, are in substance the same.

Thus the Connecticut Constitution provides as follows:

"He shall not be compelled to give evidence against himself nor be deprived of life, liberty, or property but by due course of law."

Article 1, Section 9, Conn. Constitution.

"No person shall be arrested, detained, or punished except in cases clearly warranted by law."

Article 1, Section 10.

"All courts shall be open, and every person for any injury done to him in his person, property, or reputation shall have remedy by due course of law, and right and justice administered without sale, denial, or delay."

Article 1, Section 12.

The language of the Federal Constitution is as follows:

The party shall not "be deprived of life, liberty, or property without due process of law."

Fifth Amendment, Constitution of the U. S.

Again:

"Nor shall any state deprive any person of life, liberty, or property without due process of law," nor deny to any person within its jurisdiction the equal protection of the laws.

Fourteenth Amendment, Section 1, Constitution of the U. S.

The court will see that the expressions "due course of law" and "due process of law" were intended to cover and protect the same rights.

No doubt the usual customs and forms long practiced and well known in particular cases may be held to be due process.

Thus in case of a delinquent collector of United States revenue a distress warrant may issue against him, signed by the solicitor of the treasury. A long and well-settled practice

in England and this country in revenue cases established a certain process as due process.

Murray vs. Hoboken Co., 18 Howard, 272.
Statutes Conn., Revision 1784, page 198.

Now, what is the complaint which the plaintiff in error makes? Just this: That he is summoned into court and threatened with the pains and penalties of a mandamus when the demand which he is expected to pay has not been determined except by State commissioners, nor funds to pay it provided by any process at all.

We use these terms advisedly. The only warrant which the treasurer has for the payment of these moneys is the simple order of the State Commissioners. Can it be seriously contended that this amounts to process of any kind?

Printed Record, page 55.

The legislature may doubtless determine by statute the proportions which these towns shall respectively bear. But this mandamus is not directed against the town. It is aimed at the treasurer. Judge Baldwin, speaking for the majority of the State court, says that the mandamus runs singly to the party who is bound to do the particular act commanded.

State vs. Williams, Treasurer, 68 Conn., 157.
Printed Record, page 84.

No notice whatever is to be given to the town before the demand is made upon the treasurer, and no opportunity afforded to the town officers to supply the treasurer with the funds for these purposes.

In a case where a Probate Court had by mistake granted administration upon the estate of a living person, the question arose whether certain notices given under a State statute were sufficient or due notice. This court held that it is not

bound by the State statute upon that question, but will look into the State statute and construe it.

Scott vs. McNeal, 154 U. S., 45.

According to the reasoning of the majority of the State court, the treasurer is to take from any town moneys in his hands, at any time, upon the peremptory demand of State commissioners, enough to satisfy that demand, whatever it may be, not exceeding the proportion of the town, and pay it over. He is to do this, although he may know that every dollar in his hands was raised by the town for other purposes, and is needed for those purposes.

We say that no legislature has the right to deal in this manner with the treasurer of a Connecticut town. What is he to do if the treasury happens to be empty? Is he to go out and borrow the money? He has not the power to make such a loan.

East Hartford vs. American Nat. Bank, 49 Conn., 552.

True, there is a provision in the Special Act of 1895, Record, page 54, Section 4, that the towns shall provide for the expenses in the tax levy. But how can the treasurer compel them to do it? If a town meeting be called, can the treasurer compel the voters to lay the tax?

There is one plain principle upon which town liabilities are to be enforced. That principle is that a judgment against a town is a judgment against all its inhabitants, and that execution, founded upon such a judgment, runs against the property of every individual in the town.

Union vs. Crawford, 19 Conn., 331.

Charter Oak Nat. Bank vs. Bloomfield, 121 U. S., 127.

We refer to the following language of a distinguished Connecticut judge:

"Taxation in most cases can only be the result of the voluntary action of the corporation, dependent upon the contingent will of a majority of the corporators, and upon their tardy and uncertain action. It affords no security to creditors, because they have no power over it. Such reasons as these probably operated with our ancestors in adopting the more efficient and certain remedy which has been resorted to in the present case, and which they had seen to some extent in operation in the country whose laws were in their inheritance."

Per Church, J.

Beardsley vs. Smith, 16 Conn., 376.

But what would have been due process of law in this case? The Act of 1887, above cited, furnishes a proper example of it. (Printed Record, page 62, Section 7.)

The executive officers of a Connecticut town are the selectmen. Their appointment is provided for by the Constitution.

"Each town shall annually elect selectmen and such officers of local police as the laws may prescribe." (Constitution of Conn., Article 10, Section 2.)

They are to superintend the concerns of the town, adjust and settle all claims against it, and draw orders on the treasurer for payment.

Gen. Statutes Conn., Section 64.

Charter Oak Nat. Bank vs. Bloomfield, 121 U. S., 136.

One of them is to be first selectman and *ex officio* the town agent.

Gen. Statutes Conn., Section 48.

The Court will notice that the Special Act of 1895 does not impose a tax upon the towns, and provide methods for the collection of it. It simply provides that taxes shall be laid. It

furnishes the treasurer with no effective means of raising money.

The act in substance provides that certain state officers, who have no authority to perform town duties, shall make a demand, not upon the selectmen, who are the executive officers of a town charged with the management of its affairs, but upon the treasurer, who has no power at all to raise money to be applied to such a purpose.

If the treasurer does not meet this demand he is to be sent to prison for disobedience of a mandamus. The voters of the town may refuse to lay the tax, or supply the treasurer with a dollar. Yet the act provides for these peremptory proceedings against the treasurer.

We say it would deprive the treasury of the town of money (if the money were there) without any process of law. If there be no money at hand, then the act would simply deprive the treasurer of his liberty.

- There is due process of law, where the party has by the statute itself an opportunity to appear and contest the demand, for example, by injunction against the levy of a tax.

McMillan vs. Anderson, 95 U. S., 42.

So where the title to an office was in dispute, this Court held that process was due process, when the party had been removed from office "in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights."

Kennard vs. Morgan, 92 U. S., 480.

There is no finding that the town had laid any tax for these purposes, or that the treasurer has money in hand applicable to them.

Neither the public or private act of 1895, in terms declares, that the cost of a bridge, or its maintenance shall be a debt against the town, or that judgment may be rendered against it for the same.

Again the two acts are inconsistent. The Public Act declares that new bridges shall be built by the towns. (Record page 58, Section 2.)

The Private Act declares that new bridges shall be erected, or built by the commissioners. (Record, page 53, Section 2.)

Again the legislature has undertaken to bind these towns by the bonds of a district. By the fourth section of the Private Act of 1895, it is provided that the commissioners shall issue the bonds of the district to an amount not exceeding \$500,000.

Each Connecticut town has a seal as provided by statute.

Gen. Statutes, Conn., Sections 75 and 129.

But no signature of selectmen, or seal of a town, is to appear upon these bonds. They are to be binding upon the "District," a corporation made up of five towns. Not one of the towns is to have any voice as to the cost of the bridge or the amount of bonds to be issued. State commissioners appointed to perform town duties are to determine whether this structure is to cost \$100,000 or \$500,000. The taxpayers are not to be consulted.

The towns or their treasurers are to pay over to the treasurer of the commission a sum equal to twenty-five cents upon each one thousand dollars of the grand list, in order to provide for the payment of the bonds as they mature, and for maintenance they are to pay any further sums, such as the commissioners may determine, as the proportions of the towns under the provisions of the act.

No other provision is made for the enforcement of the payment of these amounts than the general one that the towns shall provide for such payments in their annual tax levy. There is no provision for notice to the town, what amount of bonds have been issued, or what amount is needed each year.

There is no provision for any process, except the simple demand of the commissioners upon the towns at any time for any amounts within the limits named.

We say this is no process at all. It is mockery to call it process. Who that has any knowledge of the laws of Connecticut, or of New England towns, ever before intimated that a mere demand made upon town officers by a State commissioner for so much money, is, "due process of law"?

It is not done in accordance with established forms or usages known in this State, and we believe not in other States of the Union.

Process implies some notice.

Kennard vs. Morgan, 92 U. S., 480.

Due process means the same thing as "the law of the land," in Magna Charta.

Davidson vs. New Orleans, 96 U. S., 102.

We are not denying the taxing power of the State. They have not laid a tax. They have set state officers over the towns to simply demand so much money of them whenever the commissioners happen to want it.

As to the expenses for maintenance and ordinary repairs the act provides no standard except the determination of the commissioners. It is not provided that the proportions shall be the same as, or different from, those of permanent construction.

The commissioners are absolutely to determine the proportion of the towns.

The question is whether the rights and liberties of towns can be destroyed in this manner.

Another most astonishing feature of the law is found in the Private Act, Section 3. (Printed Record, page 53.)

Damages resulting from defective condition of highways or bridges are to be paid by the Board of State Commissioners, and the towns must pay all these expenses. In other words, a board of state commissioners can be guilty of negligence, and then throw the entire cost of such negligence upon five towns, whose agents they are not, and who have no voice in their appointment. The Chief Justice of Connecticut speaks of this as a monstrous injustice. (Printed Record, page 86.)

Is this a part of "the law of the land"? If so, we will inquire from what "land" such a law is supposed to be derived.

It is not to be forgotten that this highway includes one mile of causeway, located in a freshet region.

Such liabilities as this are to be placed upon five towns, while they have no part in the management of the highway.

Again, this section is thoroughly interwoven with other sections and clauses of the law. It is a part of a scheme to deprive the towns of the right to manage their local affairs.

When various clauses in a law are dependent on each other, each making part of one consistent plan or scheme, then if one part be unconstitutional, the whole goes down together.

Warren vs. The Mayor, 2d Gray, 84.

People vs. The Supervisors, 43 N. Y. 10, 23.

Separate clauses are not to be held valid, unless they are independent clauses.

Wynehamer vs. The People, 13 N. Y., 441, 442.

But there is no other provision in the act for the payment of damages for negligence except this one.

Poindexter vs. Greenhow, 114 U. S., 304, 305.

The objections of the Chief Justice of Connecticut go to so much of the decision as holds that the order of the relators is obligatory upon the town through its treasurer.

We call attention to this dissenting opinion. It is a masterpiece of legal reasoning. Indeed, it plainly demonstrates that if this Private Act of 1895 can be sustained, then town government is destroyed in Connecticut.

It may be asked "how is this a Federal question"? We answer because such a law violates both State and Federal constitutions.

We beg leave to inquire whether a law which makes one man pay damages for the negligence of another, whom the former has not selected as his agent, does not violate the Federal and State constitutions?

What "due process of law" exists, or can exist which will justify such legislation?

The court will at once see that the question of a proper location of this bridge may become of paramount importance. Not the slightest permission is extended under the Private Act of 1895 to the city of Hartford, or either of the five towns, to have any voice in the location of the structure. Their only duty and privilege is to pay the amounts demanded of them.

This is the same kind of interference with local affairs which

was repudiated by the Supreme Court of Illinois, when the State attempted to lay out and construct parks in Chicago.

People vs. Mayor of Chicago, 51st Illinois, 17.

Can it be seriously contended that the Constitution of the United States contains no guaranty of the right of local self government?

For what purpose was the 14th Amendment inserted into the Constitution, if not to afford such protection?

It is not to be forgotten, that while the Fifth Amendment of the Federal Constitution was intended as a restraint upon congress, these provisions for due process of law found in the Fourteenth Amendment are a restraint upon State legislatures.

Davidson vs. New Orleans, 96 U. S., 102.

We now contend that the destruction of local self government in case of a Connecticut town is the destruction of "due process of law" with respect to it, and violates both the State and Federal constitution.

"Due process of law" has been repeatedly defined. We refer to an admirable collection of these statements of it in

Palmer vs. Stuart, 74 N. Y., page 191.

"It may, however, be stated generally, that due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing or an opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this."

Per Earl J. Stuart vs. Palmer, *supra*.

A proceeding which proceeds upon inquiry and renders judgment only after trial.

Webster *arguendo*. Dartmouth College Case, 4th Wheaton, 519.

"Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as these maxims prescribe for the class of cases to which the one in question belongs." (Cooley's Constitutional Limitations, page 356.)

We beg to inquire what notice this town (now sought to be subjected through its treasurer) has ever had to impeach, or even to question the determination of the State Commissioners, as to the proportions due from the town of Glastonbury?

The town of Glastonbury has never been called upon to lay any tax for this purpose. Had it been notified to lay such tax, and had it wrongfully refused, then process should have been served upon the municipality, and the customary "law of the land" which has prevailed in Connecticut for two centuries would have given the town an opportunity to appear and defend.

It is said by a majority of the State court that mandamus is due process against the treasurer. That is not at all the point. The treasurer is liable only where he is subject to a clear duty, and where he has no discretion. The duty must be imperative, and the officer must have no discretion whatever.

Seymour vs. Ely, 37 Conn., 106.

Mandamus is granted against a public officer where the duty is precise and definite, the act ministerial, and where the officer has no discretion whatever, and the relator is without other adequate remedy.

Am. Casualty Ins. Co. vs. Fyler, 60 Conn., 459.

Can it be seriously contended that the treasurer is bound to take money which was raised for support of paupers, or in order to pay interest upon town indebtedness or for the support of or-

dinary highways, and devote it to the support of a bridge at Hartford?

Yet the Private Act of 1895 makes it the duty of the treasurer to pay, without notice to the town, and without the least opportunity to question the demand, or if found correct, then to provide for it.

We say this overturns all due process of law.

But our opponents contend, and the State Court by a majority of one holds, that upon these facts no property of Glastonbury is to be "taken."

Record, page 83.

Booth vs. Woodbury, 32 Conn., 118, 130.

Railroad Co. vs. County of Otsego, 16 Wallace, 667, 676.

No doubt it is not the taking of private property for public use under the right of eminent domain. A mere tax is not the taking of private property under the clause of the Constitution relating to that subject.

But the conclusive answer is this. The present law does not impose a tax. It is not the exercise of the taxing power. It simply declares that certain towns shall lay taxes. Having made that simple declaration, it proceeds to order the treasurer to pay over any town moneys in his hands.

Is there any doubt whatever that the money in the hands of the treasurer belongs to the taxpayers of Glastonbury for public purposes? Is it not "taken," when seized for new and other purposes than that for which it was raised?

Process without notice is no process. An assessment for a public improvement without notice is void.

Stuart vs. Palmer, 74 N. Y., 183.

This is not a mandamus, intended to obtain a tax levy. It

does not seek to compel the selectmen to call a town meeting for the levy of a tax.

It is said that the five towns are found by judicial decree to be specially benefited. We deny this position. The special benefit assessed upon them in 1889 was fully paid. (Printed Record, page 75; foot of page.)

The Act of 1887 under which this was done was expressly repealed in 1893.

Public Acts, Conn., 1893, Chapter 239, page 395.
Printed Record, page 76, top.

We say there is no truth in the assertion that these towns have been found specially benefited under any legislation of 1895.

The legislature of 1895 carefully avoided proceedings to ascertain damages or benefits. The old bridge had been burned, and they loaded the highway without any bridge upon five towns.

We are not denying that the legislature may place burdens upon us. We do deny that in so doing it can overturn the regular, traditional, accepted "law of the land," which relates to these towns, and which has been acted upon as one of the rights of, and as imposing obligations upon towns, long before we had a constitution.

Our history covers 250 years. We have lived under the present constitution less than 80 years.

It is said that towns have no inherent rights.

Webster vs. Harwinton, 32 Conn., 131.

We answer, that it makes no difference whether their rights

be inherent or otherwise. They are composed of persons who do possess inherent rights. They are fairly entitled to notice under any definition of "due process of law" and under State or Federal constitutions.

We notice that Judge Baldwin quotes the famous case relating to the reorganization of police in the city of New York.

People vs. Draper, 15 N. Y., 532.

We call attention to the brilliant and powerful dissenting opinion of Judge Brown in that case. He says:

"If the constitution assures to the electors, or the authorities of the counties, cities, or towns, the right to select their local officers, and to conduct the local administration, the legislature cannot by changing the names of counties, cities, and towns into shires, arrondissements, or municipalities, or by uniting two or more of them together, and denominating it a district, take away the substantial right of self government. What cannot be done directly, shall not be done indirectly." *Per Brown, J.*, 15 N. Y., 563.

We have cited a dissenting opinion. It was afterward approved by the Court of Appeals, and they declare that it ought to have constituted the opinion of the majority.

People vs. Albertson, 55 N. Y., 50. See p. 54.

See also *People vs. Porter*, 90 N. Y., 68.

The authorities cited by the majority of the State Court do not sustain its positions.

These cases establish one very plain proposition. Burdens may be placed by the Legislature upon counties, cities, and towns. Bridges and highways may be assigned to the charge of the people in particular localities. Not one of them sustains the point that local self-government can be taken away in the process of imposing these burdens. Not one of them holds that counties, cities, or towns are to be held liable for

the negligence of State commissioners. On the contrary, these authorities will show that the people of districts were permitted to manage their own affairs and to raise money in their own way.

See *Washer vs. Bullit Co.*, 110 U. S., 565; and
Agawam vs. Hampden (cited), 130 Mass., 528.

As to the Connecticut case of *Granby vs. Thurston*, it does not even tend to support the position taken by our opponents. There is not a word in the resolution of the legislature or the opinion of the court which gives any countenance to the claim that towns can be subjected to seizure of their funds without notice, or be compelled to pay damages for the negligence of State commissioners, or be drawn into court by process against the treasurer without process of any kind against the town. On the contrary, the resolution directly provides that the building and maintenance of the bridge shall be done by the inhabitants of Granby.

Granby vs. Thurston, 23 Conn., 417.

Even in the case of *People vs. Flagg*, so often cited against us, the local authorities were respected.

Chief Justice Church remarks:

"The bonds to be given are town bonds; they are to be issued by town officers; and the tax to pay them is imposed upon the property of the town."

People vs. Flagg, 46 N. Y., 405.

In the majority opinion certain citations are made from the Colonial Records of Connecticut. The court is, doubtless, aware that we lived under the charter of Charles II from 1662 to 1818, one hundred and fifty-six years, strictly speaking, without a constitution.

Not one of these or of many other instances which can be taken from our Colonial Records have the slightest tendency

to show that self-government in those days was taken from a Connecticut town.

Colonial Records, Connecticut, —

Vol. 1, page 417.

Vol. 5, page 80.

Vol. 13, page 601.

Vol. 14, pages 605, 630.

Private Laws, Connecticut, Vol. 1, pages 282, 285.

These authorities have been carefully examined. They do not at all sustain the decision given by the Supreme Court of this State in the present cause.

They show, indeed, that the General Assembly has from time to time directed particular improvements to be made at various points in the Colony or State. Not one of them is an authority to the point that towns in Connecticut can be governed by State commissioners sent out from the Capitol to rule them.

See also the following cases:

Farrell vs. Derby, 58 Conn., 234.

Taylor vs. Danbury, Public Hall, 35 Conn., 430.

Burlington vs. Schwarzmunn, 52 Conn., 181.

These cases show that the legislature from the earliest days has in such instances provided due process for the towns, and has directed them to go forward and act as towns, lay taxes as towns, and, in case of failure, then to be liable to judgment and execution against the inhabitants.

We deny the power of the General Assembly to rule a town by State commissioners. The destruction of local government is the same thing as the destruction of the ancient and accepted "law of the land," and this, again, is the same thing as the destruction of due process of law.

"The provisions of the metropolitan police bill imply much more than they express. They imply noth-

ing less than the power of the Legislature to unite the entire state into a single district for the purposes of police, with its chief or prefect at the seat of the central authority and its subordinate chiefs and agents in every city, town, and hamlet in the State. The appointment and removal of its numerous force, the dispensation and distribution of its immense patronage, would follow as incident to the main power. The principle of the act asserts the existence of this authority in the Legislature, without limitation or qualification. This is not all. The metropolitan act relates to police. The next act may relate to finance, to taxation, and to revenue. The Legislature may think it wise and expedient that the electors and authorities of the counties, cities, towns, and villages shall no longer select their assessors, tax collectors, and treasurers, as they have been accustomed to do. It may also think that boards of supervisors shall no longer sanction and apportion the assessments. . . . Let the same scheme have effect as to the support and maintenance of the poor, the construction and repairs of bridges and highways, and the constitutional rights and privileges of the counties, cities, and towns as separate communities will perish and become extinct in the presence of this modern rule of constitutional construction."

People vs. Draper, 15 N. Y., pages 571, 572.

Per Brown, J.

It is this opinion which the Court of Appeals afterward approved.

"To my mind the dissenting opinion of Judge Brown, concurred in by Judge Constock, presents unanswerable arguments why the decision should have been different. The constitution in providing for a state government in all its parts and for the entire territory, distributing its powers among the various departments and organizing and authorizing the creation and organization of local governments for the different parts of the state, under the general division of counties, cities, villages, and towns, and in such

forms that every power of government necessary to be delegated to any locality may be delegated to and conferred upon one or other of the municipal governments thus authorized and recognized would seem to exclude the idea of the creation of any new or other division for the exercise of political power or any other or different local government, and, by necessary implication, prohibit it."

People vs. Albertson, 55 N. Y., page 64.

Per Allen, J.

In the case of Davidson vs. New Orleans, 96 U. S., 102, Mr. Justice Miller says:

"But when, in the year of grace 1866, there was placed in the Constitution of the United States a declaration that 'no state shall deprive any person of life, liberty, or property without due process of law,' can a state make anything due process of law which, by its own legislation, it chooses to declare such. To affirm this is to hold that the prohibition to the states is of no avail, or has no application where the invasion of private rights is effected under the forms of state legislation. It seems to us that a statute which declares in terms and without more that the full and exclusive title to a described piece of land which is now in A shall be, and hereby is, vested in B, would, if effectual, deprive A of his property without due process of law within the meaning of this constitutional provision."

But we will inquire what difference in principle is there between a law which divests a man of real estate in the manner above stated and another law which makes A responsible in damages for all the negligence of B in the management of a highway?

By what right does the legislature attempt to transfer the money in the hands of this treasury over to a board of State commissioners? Those commissioners do not appear from the

record to have made any demand upon the town, or to have taken any steps to cause money to be raised by taxation to meet their demands.

They simply propose to take any money which they can find in the hands of the treasurer or cause him to be imprisoned. Then the Supreme Court of the State says that our money is not "taken," because taxation is not the "taking" or "deprivation" of property. We reply that this proceeding is not taxation at all.

V.

We have assigned for error (Printed Record, page 69, Section 4, and page 70, Section 10) that the town of Glastonbury and its inhabitants are deprived of equal protection of the laws.

In making this point we do not overlook certain decisions of this court. It has holden that the legislature may make laws for particular districts, and may impose peculiar burdens upon them, according to the circumstances of each case. Of course, different municipal bodies must bear different burdens, and if all individuals are treated alike, the law is not obnoxious to the Fourteenth Amendment.

Barbier vs. Connolly, 113 U. S., 27.

Fallbrook Irrigation Dist. vs. Bradley, 164 U. S., 112.

But there is nothing in these decisions which empowers a Legislature to take from five towns the right of self-government, while the same right is extended to all other towns in the State.

What law has been made for the other towns? We quote it from the Public Acts of 1895.

Be it enacted, etc.:

Section 1. Necessary bridges between towns, except it be otherwise specially provided for by law, shall be built and kept in repair by such towns, and the expense thereof shall be apportioned between them according to their grand lists, unless they otherwise agree.

Section 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Approved July 9, 1895.

Public Acts of Connecticut, page 703, Chapter 339.

This shows plainly enough that the other towns had no idea of placing themselves under a State commission in respect to bridges between towns. Under this law they can raise money in their own way, make agreements with each other, build, and maintain their own bridges.

When they come to the bridge at Hartford, five towns are to be denied all these rights, which other towns and their inhabitants enjoy.

The people of New Haven may build bridges in their own way, raise money in accordance with their own methods, locate their own bridges, make agreements with other towns in regard to such matters. Hartford, on the other hand, is to be placed under a State commission; her people are to be denied these privileges, and really no right is left to them except to pay.

We say that the Fourteenth Amendment intends to prohibit a State legislature from making odious and unnecessary discriminations of this kind. Even if the burdens which different towns are to bear be different, we say it is not competent to deny to these five towns the right to manage their local affairs in their own way, while that right is conceded to all other towns in the State.

VI.

The defendant in error has joined a motion to affirm the judgment in the court below with the motion to dismiss, and alleges, as a reason for granting the motion, that the writ of error to this court was brought for the purpose of delay. A slight examination of the record will show that no delay has ever been asked for or suggested by the plaintiff in error at any stage of the proceedings.

The defendant in error also alleges that the questions raised in the record are too frivolous for further argument. He has, however, taken the precaution to argue them at some length. It is difficult to conceive of a record that discloses more important questions than the questions raised in the record of this case. The inconsistent conduct of the General Assembly in reference to its own contract, its extraordinary course in reference to the means provided for the enforcement of its act, together form a chapter in the legislation of the State which is without precedent in the past, and it is hoped may have no successors in the future.

In 1887 the legislature passed an act making the highway in question a free public highway. Before that time the State had always been charged with the maintenance of this highway, and had maintained it either by itself or through its own agents. The expense of making this change was put upon the five towns named in the act heretofore cited. This expense amounted to \$210,000, of which the State paid \$84,000.

In 1893 the legislature again assumed the burden of the maintenance of this highway in the act approved June 29, 1893. This act provided that the highway formed by the bridge and causeway should thereafter "be maintained by the State of Connecticut at its expense." . . . "And the expense of repairing and maintaining said highway and bridges shall be incurred by said Board of Commissioners (appointed

by the Governor) on behalf of the State." The language could not be plainer. The State took back the care and maintenance of the bridge and causeway upon itself, where it had always been before 1887, when the State put the maintenance of this highway on said five towns, taking it away from its own agent, the Toll Bridge Company, which had taken care of it, under an agreement with the State, that it should pay itself for the maintenance of the highway by taking toll. It would seem that at this point the legislation might naturally end, and that the honor and good faith of the State were pledged to take care of this highway from the time the Act of 1893 was passed. But such was not the case. On November 13, 1894, the State, by its commissioners, contracted to erect a bridge across Connecticut River. The contractor commenced the building of the bridge, and had made considerable progress in the construction of a temporary bridge when, on May 17, 1895, the former bridge took fire and was totally destroyed. Within seven days after the bridge was burned the legislature passed the Act approved May 24, 1895, which put the rebuilding of the burned bridge and the maintenance thereof on the five towns named in the act. The act did not even provide that the insurance on the bridge should be given to the towns. The towns were required to go forward and build the bridge to take the place of the one destroyed, while in the care and custody of the State under the Act of 1893. The plaintiff in error contends that such conduct on the part of a sovereign state is against natural justice and oppressive, and he has invoked the power of the courts, both Federal and State, to protect him from this wrong. The questions here presented are above the charge of frivolity.

When the chief justice of a state renders an opinion against the constitutionality of a law, so learned and vigorous as this, and in that opinion another judge concurs, it is altogether too late to say that the questions which they discuss are frivolous. It may be said that Chief Justice Andrews and Judge Hamers-

ley have not undertaken to pass upon federal questions. But they have, shown, with great clearness, that to set State commissioners over Connecticut towns, to rule them and to make the towns responsible for the acts and negligence of such commissioners, is to destroy due course of law or due process of law in this State.

The State court, by a majority of one, holds that the legislation in question does not violate the State or Federal Constitution. But no one can read the minority opinion and follow its accurate reasoning and powerful diction without feeling the irresistible force of its logic. It discusses and vindicates the traditions, customs, and laws of a free people who claim the right of self-government.

We respectfully submit that the motion to dismiss the writ of error and the motion to affirm the judgment of the State court, should be denied.

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OLIN R. WOOD,

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Hartford, Conn., April 15, 1897.